1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 STEVEN DIAZ, No. CIV S-05-0376-MCE-CMK-P 12 Petitioner, 13 <u>ORDER</u> VS. DERRAL ADAMS, 14 15 Respondent. 16 17 Petitioner, a state prisoner proceeding with appointed counsel, brings this petition 18 for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 19, 2007, the court 19 directed respondent to file a brief within 30 days addressing: (a) petitioner's request for an evidentiary hearing on the issue of trial counsel's performance; (b) whether the court should 20 21 grant leave to take trial counsel's deposition; and (c) the effect of attorney-client privilege. 22 Petitioner was provided an opportunity to file a response within 15 days after service of 23 respondent's brief. Respondent filed his brief on December 11, 2007, and, to date, petitioner has 24 not filed a response. 25 /// 26 ///

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Having considered the arguments presented in petitioner's request for an evidentiary hearing, as well as respondent's December 11, 2007, brief, the court hereby grants petitioner leave to conduct discovery pursuant to Rule 6 of the Federal Rules Governing Section 2254 Cases. Such discovery is limited, however, to taking trial counsel's deposition. The parties should focus on trial counsel's reasons, if any, for not obtaining DNA testing of the physical evidence. Petitioner shall lodge with the court a transcript of the deposition by February 19, 2008. Following submission of the transcript, the court will rule on the merits of petitioner's habeas corpus petition.

IT IS SO ORDERED.

DATED: December 27, 2007

UNITED STATES MAGISTRATE JUDGE